

APPEAL NO. 040308
FILED APRIL 1, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on January 12, 2004. With respect to the issues before him, the hearing officer determined that the appellant (claimant) reached maximum medical improvement (MMI) on August 15, 2003, with an impairment rating (IR) of five percent as certified by the designated doctor appointed by the Texas Workers' Compensation Commission. The claimant appeals, arguing that the hearing officer erred in giving presumptive weight to the designated doctor's report. In its response to the claimant's appeal, the respondent (carrier) urges affirmance. It is undisputed that the claimant sustained a compensable left shoulder injury on _____.

DECISION

Affirmed.

The hearing officer did not err in giving presumptive weight to the designated doctor's report, and in determining that the claimant reached MMI on August 15, 2003, with an IR of five percent in accordance with that report. The difference in the opinions of the treating doctor and the designated doctor is attributable to the fact that the designated doctor's range of motion (ROM) figures varied somewhat from the ROM measurements of the claimant's treating doctor. We cannot agree that the treating doctor's report constitutes the great weight of the other medical evidence contrary to the designated doctor's report. Rather, this is a case where there is a genuine difference of medical opinion between the designated doctor and the treating doctor as to the date of MMI and the correct IR. We have long held that by giving presumptive weight to the designated doctor, the 1989 Act provides a mechanism for accepting the designated doctor's resolution of such differences. Texas Workers' Compensation Commission Appeal No. 001659, decided August 25, 2000; Texas Workers' Compensation Commission Appeal No. 001526, decided August 23, 2000. Accordingly, the hearing officer did not err in giving presumptive weight to the designated doctor's report and adopting the August 15, 2003, MMI date and the five percent IR.

The claimant argues that the designated doctor did not conduct a proper examination and more specifically that he did not conduct ROM testing. However, as the hearing officer noted, the designated doctor's report indicates that he performed ROM testing and includes ROM figures. Thus, the hearing officer was persuaded that the designated doctor properly followed the protocol of the Guides to the Evaluation of Permanent Impairment, fourth edition (1st, 2nd, 3rd, or 4th printing, including corrections and changes as issued by the American Medical Association prior to May 16, 2000) and we cannot agree that the hearing officer erred in so finding

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **AMCOMP ASSURANCE CORPORATION** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
800 BRAZOS, SUITE 330
AUSTIN, TEXAS 78701.**

Elaine M. Chaney
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Robert W. Potts
Appeals Judge